

BELL, McANDREWS & HILTACHK, LLP

ATTORNEYS AND COUNSELORS AT LAW

455 CAPITOL MALL, SUITE 801

SACRAMENTO, CALIFORNIA 95814

(916) 442-7757

FAX (916) 442-7759

CHARLES H. BELL, JR.
COLLEEN C. McANDREWS
THOMAS W. HILTACHK
JIMMIE E. JOHNSON
ASHLEE N. TITUS

PAUL GOUGH
OF COUNSEL

1321 SEVENTH STREET, SUITE 205
SANTA MONICA, CA 90401
(310) 458-1405
FAX (310) 260-2666
www.bmhlaw.com

February 12, 2008

BY FACSIMILE AND HAND-DELIVERY

Honorable Ross Johnson, Chairman
& Commissioners Remy, Huguenin, Leidigh and Hodson
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Agenda Item 2: Discussion of Independent Expenditures

Dear Chairman Johnson & Commissioners:

Independent expenditures are protected by the First Amendment, as the Supreme Court made clear in *Buckley v. Valeo*, 424 U.S. 1 (1976). The sole, unresolved constitutional question is whether contributions to independent expenditure committees also should be fully protected by eliminating any limits imposed by statute or ordinance. (See, e.g., *Lincoln Club of Orange County v. City of Irvine*, 292 F.3d 934 (9th Cir. 2002); *San Jose Silicon Valley Chamber of Commerce Political Action Committee v. City of San Jose*, Case No. 06-17001 (N.D.Cal. 2006); *Committee on Jobs Candidate Advocacy Fund v. Herrera*, Case No. C 07-03199 (N.D.Cal. 2007); *Long Beach Area Chamber of Commerce v. City of Long Beach*, Case No. 07-55691, (E.D.Cal. 2007).¹)

While independent expenditures may increase where contribution limits apply to candidates and other avenues of political speech, such as member communications or issue advocacy may be unavailable or blocked, the Commission has no statute that would authorize it to impose limits on such activity. Nor does the Commission have the authority to increase or eliminate candidate contribution limits as a method of reducing the practical influence of such independent expenditures.

Of course, the Commission has a responsibility to ensure that independent expenditures are actually independent, something that requires intensive fact investigation. The Commission also has the responsibility to enforce Gov't Code § 85501, which prohibits candidates for elective office to contributing to or organizing

¹ The three district court case decisions, setting aside local limits on contributions and independent expenditure committees, are currently on appeal in the Ninth Circuit Court of Appeals.

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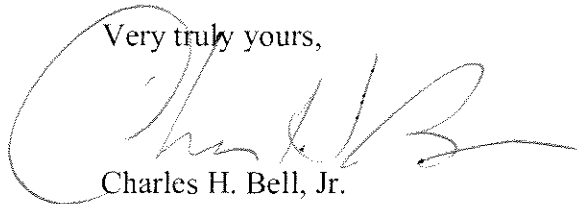
independent expenditure activity in support of or in opposition to other candidates for elective offices, state or local.

The Commission could review potential inconsistencies between its own regulations on this subject. 2 CCR §§ 18225, 18225.7, and 18550 (the latter reflecting the standards set forth in Gov't Code § 85500) have somewhat different standards, and although all three of these regulations define what is or is not an independent expenditure and contain several presumptions about coordination and independence, the latter primarily addresses the reporting of independent expenditures.

The Brennan Center analysis and recommendation, although well written and reflecting a pro-regulatory view of federal law, seems ill-tuned to California law and circumstances. The Commission is not authorized by any law to enforce a ban on corporate contributions or expenditures related to independent expenditures under Gov't Code § 82031 or issue advocacy expenditures under Gov't Code § 85310. Neither *McConnell v. FEC*, 540 U.S. 93 (2003), nor *Wisconsin Right to Life*, 126 S. Ct. 2652 (2007), provide any template or mandate for Commission action.

Thank you for the opportunity to comment on this subject.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles H. Bell, Jr.", is written over a large, faint circular stamp or watermark.

Charles H. Bell, Jr.

CHB: JEJ: sd